



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1479
Alexandria, Virginia 22313-1479
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/601,820

06/23/2003

Martin Bentham

2197.016/USX

9080

7390

06/07/2004

Charles N. J. Ruggiero, ESQ.
OHLANDT, GREELEY, RUGGIERO & PERLE, L.L.P.
10th FLOOR
ONE LANDMARK SQUARE
STAMFORD, CT 06901-2682

EXAMINER

EINSMANN, MARGARET V

ART UNIT

PAPER NUMBER

1731

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 10/501,820	Applicant(s) BENTHAM, MARTIN	
Examiner Margaret Einsmann	Art Unit 1751	

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/20/03 and 3/26/04</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-21 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-21 of copending Application No. 10/10/386161. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the limitation "the garment" in line 1. There is insufficient antecedent basis for this limitation in the claim from which it depends.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Berwin et al., US 2,990,087. In the process of Berwin's invention textile materials, especially hosiery, are placed over forms to maintain the desired shape. This is equivalent to applicant's first process step in claim 1, "removing folds from the fabric" as well as applicant's first process step in claim 12 and it also meets the limitations of claims 13-15. See col 4 line 24 et seq. The dye mixture of water base, dyestuff, resin, surface active agent and lubricant is sprayed by rotating the spray and jetting the spray through the jet nozzles. See col 4 lines 5-23. This meets the limitation of claim 16. The atmosphere in the dyeing chamber is superatmospheric pressure which provides for the migration and fixation of the dye. Though no steam is added to dilute the solution, the superatmospheric pressure at the boiling point is a steam fixation step. The dyeing, scouring, finishing, lubricating and setting occurs in from 1-30 minutes, preferably 4 or 5 minutes. Then the textile material is dried. See entire column 4.

Regarding the limitation of claims 2, 3, 4, 5, 17-20 nylon is a polyamide which has a reactive amine site. Patentee also teaches that other natural and synthetic fibers or mixtures thereof may be treated by this invention. See col 3 lines 45-56. Regarding the limitation of claims 6, 7 and 21. Note the examples in columns 7-8, Table-part I. Acid

dyes on wool, silk and nylon are used. These are water soluble dyes. As is known to the dye chemist, ionic bonds form from these dyeing processes wherein the amine site reacts with the acid functionality on the dye. Note that disperse dyes are used on several examples (6,7,18,19). These dyeing processes produce a disbursement into the fiber molecule. Accordingly since all of the material limitations of the claims are met, the claims are anticipated.

Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kronsbein et al., US 2,985,502. A process for dyeing synthetic textile garments is disclosed. Noting figures 1 and 2 and the description in column 2, nylon stockings are mounted on individual supports which stretch the wrinkles out of them, thus meeting the first step of applicant's claims 1 and 12. The upper part of the tank is provided with spray nozzles which produce a spray. At the same time dye is admitted into the tank, steam is admitted into tank 1 through the steam intake pipe 11. The pressure is maintained during the entire dyeing process, which for the dyeing of 16 stockings, is 6 minutes. Accordingly the second step of spraying onto a first side of the fabric is clearly disclosed. Applicant's third step of exposing to a migration and fixation process prior to drying (specifically exposing to steam and heat as claimed in claim 8) is disclosed as the steaming occurs simultaneously with the dyeing. Nylon meets the limitation of having amine sites to react with the dye; the metal complex dye disclosed in col 3 line13 meets the limitation of a water soluble dye. Accordingly the limitations of the claims are disclosed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 571-272-1314. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Margaret Einsmann
Primary Examiner
Art Unit 1751

June 2, 2004